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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,443	04/22/2004	Martin E. Rogers	4271-23	6332

23117 7590 04/26/2005

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EXAMINER
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SASTRI, SATYA B

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/829,443	Applicant(s) ROGERS ET AL.	
	Examiner Satya B. Sastri	Art Unit 1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 12-16, 34-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Applicant's amendment filed March 24, 2005, has been fully considered with the following results. The amendment is not found persuasive for the reasons elaborated below in arguments. Therefore, the rejection of *claims 1-4, 12-16* under 35 U.S.C. 102(b) as anticipated by Hosokawa et al. (US 6,313,231 B1) set forth in previous office action mailed November 7, 2004 is sustained. Claims 1-4, 12-16, 34-37 are now pending in the application.

2. The Affidavit under 37 CFR 1.132 filed on March 24, 2005 is insufficient to overcome the rejection of claims 1-4, 12-16 based upon Hosokawa et al. as set forth in the last Office action because of the arguments presented below.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. *Claims 1-4, 12-16, 34-37* are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the

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claimed invention. The amended claims include the limitation “in an amount sufficient to render the flame retardant particle flame-retardant” which is not described in the specification.

***Allowable Subject Matter***

5. ***Claims 34-37*** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Instant claims recite a superabsorbent composition comprising about 25 to 200 wt.% of the flame retardant in contrast to 0.01 to 5 parts suggested in the prior art to Hosokawa et al. There is no teaching or suggestion to include the instantly claimed range of flame retardant in the compositions.

***Response to Arguments***

6. Applicants argue that the prior art superabsorbent compositions comprising sodium or potassium salts of phosphoric acid as chelating agents does not remotely suggest that the chelating agents would or could function as flame retardants. Material and their properties are inseparable and therefore, the disclosed chelating agent must inherently function as a flame retardant. Claim 3 of the instant application clearly teaches phosphoric acid and its sodium salt derivatives as a flame retardant.

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7. With regard to the maximum level of chelating agent in the prior art and the Declaration under 37 CFR 1.132, applicant's attention is drawn to claim 4 of the instant specification that recites a range of the flame retardant as 1-500 wt.%. Therefore, 1-5% of sodium or potassium salts of phosphoric acid in the superabsorbent composition disclosed in the prior art must inherently result in a flame retardant superabsorbent composition as claimed instantly. However, applicant's Declaration contradicts this range and concludes that 1-5% of sodium or potassium salts of phosphoric acid in the superabsorbent composition does not result in the Sap particles being flame-retardant.

***Action Is Final***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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***Future Correspondence***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Satya Sastri whose telephone number is 571-272-1112.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on 571-272-1114. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 872-9306 for regular communications. The unofficial direct fax phone number to the Examiner's desk is 571-273-1112.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
SATYA SASTRI

April 19, 2005

**TATYANA ZALUKAEVA  
PRIMARY EXAMINER**

